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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF: S.G., & W.G., JR.,
CHILDREN IN NEED OF SERVICES,
WILLIAM GRAY, SR.,
Appellant-Respondent,
vs.
MARION COUNTY DEPARTMENT OF CHILD
SERVICES,
Appellee-Petitioner,
and,
CHILD ADVOCATES, INC.,
Co-Appellee (Guardian Ad Litem).

No. 49A05-0608-JV-435

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Christopher Piazza, Judge
Cause No. 49D09-0511-JC-44025-44026

March 8, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

William Gray appeals the juvenile court's order determining that his children S.G. and W.G. are children in need of services ("CHINS").¹ We affirm.

Issue

The sole issue for our review is whether there is sufficient evidence to support the juvenile court's determination that S.G. and W.G. are CHINS pursuant to Indiana Code Section 31-34-1-1².

Facts

On November 6, 2005, when fourteen-year-old S.G. returned home from a sleepover at a friend's house, S.G.'s mother told her to clean the bathroom. When S.G. told her mother that she cleaned the bathroom before she went to the sleepover, Gray told S.G. not to argue with her mother. Gray then slapped S.G. in the face, resulting in a cut

¹ Vivian Gray, the children's mother, is not a party to this appeal.

² Gray also argues that there is insufficient evidence to support the trial court's alternative determination that S.G. is a CHINS pursuant to Indiana Code Section 31-34-1-2. However, because we find sufficient evidence to support the CHINS determination pursuant to Section 31-34-1-1, we need not address this issue.

to the inside of S.G.'s mouth. S.G. started hitting Gray, who pushed S.G. to the floor. As she fell, S.G. hit her eye on the corner of the coffee table, resulting in a black eye. Gray threatened to hit S.G. with the cast iron skillet lid that he had in his hand. S.G.'s mother intervened by placing her foot on S.G.'s chest and holding her down. S.G. jumped out a window and fled to her sister's house. When she returned home later that evening with her eight-year-old brother W.G., Gray threatened to kill her if she ever hit him again.

Marion County Department of Child Services ("DCS") caseworker Lucita Exom-Pope investigated the incident after it was reported. During the course of her investigation, Exom-Pope discovered that illegal drug use was occurring in the home. Specifically, Gray admitted smoking marijuana in the home twice during the week of the altercation with his daughter. Following the investigation, DSC filed a CHINS petition. Testimony at the fact-finding hearing revealed that S.G. had seen her father use both marijuana and crack cocaine in the home. She had seen her father use crack cocaine three times during the week of the altercation. Testimony also revealed that the Gray family has been involved in three prior substantiated physical abuse cases, two of which resulted in CHINS adjudications and the placement of the children outside the home for one year each time.

Following the hearing, the juvenile court adjudicated S.G. and W.G. to be CHINS. Specifically, the court's order provided in part:

Conclusions of Law

3. [S.G. and W.G.] are Children in Need of Services because their parents, Vivian Gray and William Gray, Sr., had a physical altercation with [S.G.], resulting in [S.G.] sustaining a black eye, and

because both Mr. and Mrs. Gray use marijuana and/or crack cocaine in the home.

4. [S.G. and W.G.] are victims of neglect under IC 31-34-1-1. [S.G.] is also a victim of abuse under IC 31-34-1-2.
5. Vivian Gray and William Gray, Sr. failed to provide [S.G. and W.G.] with a home free from physical abuse and neglect and failed to provide necessary supervision for the children due to their illegal drug use in the home.
6. [S.G. and W.G.] need care and treatment that will not be provided without the coercive intervention of the Court.
7. Vivian Gray and William Gray, Sr. need services to assist them in appropriately parenting their children and refraining from illegal drug use.

Appellant's App. p. 76. Gray appeals the juvenile court's determination that S.G. and W.G. are CHINS.

Analysis

At the outset we note that the CHINS statutes do not require that a court wait until a tragedy occurs to intervene. Roark v. Roark, 551 N.E.2d 865, 872 (Ind. Ct. App. 1990). Rather, a child is a CHINS when he or she is endangered by parental action or inaction. Id. Further, as with parental rights terminations, the purpose of a CHINS adjudication is not to punish parents but to protect their children. In re A.I., 825 N.E.2d 798, 805 (Ind. Ct. App. 2005), trans. denied.

Here, Gray argues that there is insufficient evidence to support the juvenile court's CHINS determination. When we review the sufficiency of the evidence, we consider only the evidence and reasonable inferences therefrom that are most favorable to the

judgment. In re A.H., 751 N.E.2d 690, 695 (Ind. Ct. App. 2001), trans. denied. We neither reweigh the evidence nor assess the credibility of the witnesses. Id.

The juvenile court found that S.G. and W.G. were CHINS pursuant to Indiana Code Section 31-34-1-1, which provides as follows:

A child is a child in need of services if before the child becomes eighteen (18) years of age:

- (1) the child's physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child's parent . . . to supply the child with necessary food, clothing, shelter, medical care, education, or supervision; and
- (2) the child needs care, treatment or rehabilitation that:
 - (A) the child is not receiving; and
 - (B) is unlikely to be provided or accepted without the coercive intervention of the court.

The DCS was required to prove by a preponderance of the evidence that S.G. and W.G. were CHINS. See id.

Gray contends that there is insufficient evidence to support the juvenile court's CHINS determination because there was no evidence that he was using drugs in the home "at the time of the fact finding hearing." Appellant's Brief, p. 10 (emphasis in the original). As the sole authority to support his proposition that DSC had to prove he was using drugs at home at the time of the hearing, Gray directs us to In re T.H., 856 N.E.2d 1247 (Ind. Ct. App. 2006).

In that case, Harris voluntarily signed a Service Referral Agreement after officers found an unsecured gun on top of his refrigerator. The officers' sole concern after searching Harris's house was that the lack of proper storage for the gun posed a threat to

Harris's children, who did not even know that the gun was there. Four months later, DSC removed Harris's children from his care based solely upon his failure to follow the Agreement. Two days later, DSC filed a petition alleging that the children were CHINS based on Harris's failure to follow the Agreement. The children were subsequently adjudicated to be CHINS, and Harris appealed.

This court noted that with respect to the issue of Harris's improper storage of the gun, it might have been true that this endangered the children at one time. However, there was no evidence that the gun endangered the children at the time of the hearing. This was because Father had taken the affirmative steps to provide a locker for the gun and then to dispose of it altogether. That left the only possible basis for the CHINS determination to be Harris's refusal to follow the Agreement, which he voluntarily signed. Because there was no evidence of substantial parental shortcomings endangering the child that needed to be addressed by the services required by the Agreement, we reversed the CHINS determination. Id. at 1252. Here, however, there is no evidence that Gray took any affirmative steps to address either his marijuana and crack cocaine use or the domestic violence issues. Further, his children are well aware of these issues. Gray's reliance on T.H. is therefore misplaced, and we find no error.

Gray further argues that there is insufficient evidence to support the CHINS determination because his illegal drug use in the home does not constitute neglect. First, the juvenile court found both illegal drug use and domestic violence. Further, in a termination of parental rights case, this court has previously concluded that drug use and domestic violence render the environment of children destructive at best and dangerous at

worst. See In re A.I., 825 N.E.2d at 811. A destructive and/or dangerous environment endangers a child and will therefore support a CHINS determination. See Ind. Code § 31-34-1-1. The evidence in this case is sufficient to support the CHINS determination.

Conclusion

There is sufficient evidence to support the trial court's determination that S.G. and W.G. are CHINS. We affirm.

Affirmed.

BAILEY, J., and VAIDIK, J., concur.